

GREG J. ROCKWELL, ESQ. (SBN 67305)  
grockwell@bjg.com  
JILL P. SAZAMA, ESQ. (SBN 214215)  
jsazama@bjg.com  
BOORNAZIAN, JENSEN & GARTHE  
A Professional Corporation  
555 12<sup>th</sup> Street, Suite 1800  
P. O. Box 12925  
Oakland, CA 94604-2925  
Telephone: (510) 834-4350  
Facsimile: (510) 839-1897

Attorneys for Defendant ALAMEDA  
COUNTY MEDICAL CENTER

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOHN HUTCHENS, ZAMORA MOTON,  
Plaintiffs,  
vs.  
ALAMEDA COUNTY MEDICAL CENTER,  
and DOES 1-20,  
Defendants.

Case No.: 07 CV 05600 SBA  
Related case: 06 CV 06870 SBA

ALAMEDA COUNTY MEDICAL  
CENTER'S NOTICE OF MOTION AND  
MOTION TO DISMISS PURSUANT TO  
FED. R. CIV. P. 12(B)(6);  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
SAME

Date: Tuesday, March 25, 2008  
Time: 1:00 p.m.  
Dept: Courtroom 3, 3<sup>rd</sup> Floor

Complaint filed on November 2, 2007

TO PLAINTIFFS AND ALL OTHER PARTIES AND THEIR ATTORNEYS OF  
RECORD:

PLEASE TAKE NOTICE THAT on Tuesday, March 25, 2008 at 1:00 p.m., or as soon  
thereafter as the matter may be heard, in Courtroom 3, 3<sup>rd</sup> Floor, before the Honorable Sandra B.  
Armstrong in the Oakland Courthouse of the above-captioned court, located at 1301 Clay Street,  
Oakland, California, defendant ALAMEDA COUNTY MEDICAL CENTER (hereafter "ACMC")  
will and hereby does move to dismiss all causes of action alleged against it in the Complaint for

1 Damages and Injunctive Relief (hereafter "Complaint") filed by plaintiffs JOHN HUTCHENS and  
2 ZAMORA MOTON (hereafter "Plaintiffs") pursuant to Rule 12(b)(6) of the Federal Rules of Civil  
3 Procedure. APMC so moves on the grounds that Plaintiffs have failed to state a claim  
4 against APMC; Plaintiffs' state law claims are time-barred for failure to present a claim to APMC  
5 as required by the California Government Tort Claims Act; Plaintiffs' state law claims are barred  
6 by various state law immunities; and as to Plaintiff's Civil Code section 52.1 claim, it fails to state  
7 a claim. Therefore, all claims against defendant APMC should be dismissed.

8 This motion is supported by this notice of motion, the accompanying memorandum of  
9 points and authorities, a request for judicial notice and such other records and documents on file  
10 with the court and/or that may be lawfully presented at the time of hearing on this matter.

11 DATED: February 19, 2008

12 BOORNAZIAN, JENSEN & GARTHE  
A Professional Corporation

13  
14 By: /s/ Jill Sazama, Esq.  
15 JILL P. SAZAMA, ESQ.  
Attorneys for Defendant  
16 ALAMEDA COUNT MEDICAL  
CENTER  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**  
**OF MOTION TO DISMISS**

**TABLE OF CONTENTS**

|  | <b>Page</b> |
|--|-------------|
| <b>I. FACTUAL BACKGROUND.....</b>  | <b>3</b>    |
| <b>II. ARGUMENT.....</b>   | <b>5</b>    |
| <b>A. Plaintiff Has Failed to Allege Sufficient Facts to State a Section</b>       |             |
| <b>1983 Claim Against ACMC.....</b>  | <b>5</b>    |
| <b>1. Plaintiffs Have Failed to Allege Facts to Support a</b>                      |             |
| <b>Violation of Their Constitutional Rights by ACMC.....</b>                       | <b>5</b>    |
| <b>2. ACMC Did Not Have Customs or Policies Which</b>                              |             |
| <b>Amount to Deliberate Indifference to Plaintiffs' Constitutional Rights.....</b> | <b>10</b>   |
| <b>3. ACMC's Policies or Customs Were Not the Moving</b>                           |             |
| <b>Force Behind the Alleged Violation.....</b>                                     | <b>10</b>   |
| <b>B. Plaintiffs' State Law Claims Are Time-Barred.....</b>                        | <b>11</b>   |
| <b>C. Plaintiffs' State Law Claims are Barred by State Law</b>                     |             |
| <b>Immunities.....</b>   | <b>12</b>   |
| <b>D. Plaintiffs' Civil Code Section 52.1 Claim is Not Well-Pleaded....</b>        | <b>13</b>   |
| <b>III. CONCLUSION.....</b>  | <b>14</b>   |

## TABLE OF AUTHORITIES

|  | Page           |
|--|----------------|
| <b>Cases</b>   |                |
| <i>Arnold v. Internat'l Business Machines Corp.</i> , 637 F.2d 1350 (9 <sup>th</sup> Cir. 1981).....             | 5              |
| <i>Bd. of the County Comm'rs v. Brown</i> , 520 U.S. 397 (1997).....   | 6              |
| <i>City and County of San Francisco v. Ballard</i> , 136 Cal.App.4th 381 (Cal. Ct. App. 2006).....               | 14             |
| <i>Curnow v. Ridgecrest Police</i> , 952 F.3d 321 (9 <sup>th</sup> Cir. 1991) .....                              | 6              |
| <i>Dixon v. City of Turlock</i> , 219 Cal. App. 3d 907 (Cal. Ct. App. 1990).....                                 | 11             |
| <i>Jacqueline T. v. Alameda County Child Protective Services</i> , 155 Cal.App.4th 456 (Cal. Ct. App. 2007)..... | 12, 13         |
| <i>Jones v. Kmart Corp.</i> , 17 Cal.4th 329 (Cal. 1998).....  | 14             |
| <i>Lee v. City of Los Angeles</i> , 250 F.3d 668 (9 <sup>th</sup> Cir. 2001).....                                | 5              |
| <i>Monell v. Dep't of Soc. Servs.</i> , 436 U.S. 658 (1978).....   | 5, 7           |
| <i>Munoz v. State of California</i> , 33 Cal.App.4th 1767 (Cal. Ct. App. 1995).....                              | 11             |
| <i>Papasan v. Allain</i> , 478 U.S. 265 (1986).....  | 12             |
| <i>Santee v. Santa Clara County Office of Educ.</i> , 220 Cal.App.3d 702 (Cal. Ct. App. 1990).....               | 12             |
| <i>Venegas v. County of Los Angeles</i> , 32 Cal.4th 820 (Cal. 2004).....  | 14             |
| <b>Statutory Authority</b>   |                |
| 42 U.S.C. section 1983.....  | 3, 5, 7, 9, 10 |
| California Civil Code section 52.1.....  | 5, 13-14       |
| Cal. Gov. Code § 815.....  | 12             |
| Government Code section 818.....   | 13             |
| Government Code section 820.2.....   | 13             |
| Government Code section 820.4.....   | 12, 13         |
| Cal. Gov. Code § 821.6.....  | 13             |

|    |   |      |
|----|---|------|
| 1  | Cal. Gov. Code § 905.....   | 11   |
| 2  | Cal. Gov. Code § 905.2.....   | 11   |
| 3  | Cal. Gov. Code § 911.2.....   | 11   |
| 4  | Cal. Gov. Code § 911.4.....   | 11   |
| 5  | Cal. Gov. Code § 945.4.....   | 11   |
| 6  | Cal. Health & Safety Code § 101850.....                                 | 6, 7 |
| 7  | Cal. Health & Saf. Code § 123605.....                                   | 8    |
| 8  | Cal. Penal Code § 11165.13.....   | 8    |
| 9  | Cal. Welf. & Instit. Code § 300 .....                                   | 8    |
| 10 | Cal. Welf. & Instit. Code § 306 (a)(2).....                             | 8    |
| 11 | Cal. Welf. & Instit. Code § 308, subd. (a).....                         | 9    |
| 12 | Cal. Welf. & Instit. Code § 309, subd. (b).....                         | 9    |
| 13 | <b>Other Authority</b>  |      |
| 14 | Alameda County Ordinance 0-98-56.....                                   | 7    |
| 15 | W. Prosser, Law of Torts § 41 at 238-39 (4 <sup>th</sup> ed. 1971)..... | 5    |
| 16 |   |      |
| 17 |   |      |
| 18 |   |      |
| 19 |   |      |
| 20 |   |      |
| 21 |   |      |
| 22 |   |      |
| 23 |   |      |
| 24 |   |      |
| 25 |   |      |
| 26 |   |      |
| 27 |   |      |

1 Because Plaintiffs' complaint in this case fails to state a claim, defendant  
2 ALAMEDA COUNTY MEDICAL CENTER (hereafter "ACMC") hereby moves to  
3 dismiss all causes of action therein pursuant to Rule 12(b)(6) of the Federal Rules of Civil  
4 Procedure. Plaintiffs have failed to allege sufficient facts to support their 42 U.S.C.  
5 section 1983 claim against ACMC. As for Plaintiffs' state law claims, they are time-  
6 barred, and are barred by several state law immunities. Any Civil Code section 52.1 claim  
7 is also insufficiently pleaded. For the foregoing reasons, ACMC respectfully requests that  
8 its motion to dismiss be granted, and the Complaint against ACMC be dismissed.

9 **I. FACTUAL BACKGROUND**

10 Plaintiffs JOHN HUTCHENS and ZAMORA MOTON (hereafter "Plaintiffs") sue ACMC  
11 for injuries they claim to have suffered when a protective "hold" was placed on Plaintiffs' then-  
12 newborn child by an Alameda County social worker, Rudolpho Hernandez. Complaint, at 2:6-18.  
13 Their child was born in November 2005 at Highland Hospital, one of the hospitals operated by  
14 ACMC. *Id.*, at 1:24-26; Request for Judicial Notice (hereafter "RJN"), at 1:27. An initial hold  
15 was placed on Plaintiff's newborn after a test performed on plaintiff Moton, the infant's mother,  
16 came back positive for narcotics. Complaint at 2:1-6. That hold was lifted shortly thereafter, once  
17 it was revealed that the source for the positive test was a prescription of Tylenol with Codeine  
18 given by the hospital to Ms. Moton. *Id.* at 2:6-10.

19 However, Mr. Hernandez afterward re-instituted the hold, because he had reviewed "the  
20 past history of Plaintiff Moton and her contacts several years ago with Alameda County Social  
21 Services." *Id.* at 2:11-15, 2:21-23. ACMC was not a part of, nor was it privy to Mr. Hernandez'  
22 decision-making process. It is this second hold that is the source of Plaintiff's complaint.

23 Once the hold was re-instituted by Mr. Hernandez, Plaintiffs' access to their child was  
24 restricted by ACMC. Plaintiffs were not all denied access to their newborn. Instead they complain  
25 that "defendants at the hospital . . . would not allow Plaintiff Moton to have the baby alone in her  
26 room." Complaint, at 2:14-16. Plaintiff Moton was furthermore "required to move out of her  
27

1 room and was given a small cot in the waiting room next to the nursery, and was not allowed  
2 visitors.” *Id.* at 2:18-19.

3 Mr. Hernandez informed the Plaintiffs that the following Monday there would be a custody  
4 hearing to determine the fate of the baby. *Id.* at 2:23-25. The hearing was held that afternoon at  
5 the Alameda County Department of Social Services. *Id.* at 2:25-26. Neither ACMC nor any of its  
6 employees or agents is alleged to have instigated or participated in this hearing.

7 At the hearing, Plaintiffs claim that Mr. Hernandez did not advance any good grounds “to  
8 assert that Plaintiff Hutchens was in any way unqualified to have custody of the baby.” *Id.* at 3:8-  
9 10. Ultimately “Hernandez and Alameda County Social Services” released the hold on the baby,  
10 and Plaintiffs were allowed to take the baby home from the hospital. *Id.* at 3:12-14.

11 Plaintiffs served a California government tort claim on the County of Alameda on May 2,  
12 2006. Complaint at 4:1-4. They have never served such a claim on ACMC. Instead, they assert  
13 as a legal conclusion that the claim which they presented to the County of Alameda “constituted  
14 service on the defendant Alameda County Medical Center.” *Id.* at 4:4-6.

15 On November 3, 2006, Plaintiffs initially filed suit in this court against the Alameda  
16 County Department of Social Services, Alameda County Department of Children and Family  
17 Services, and against Mr. Hernandez individually. Original Complaint in *Hutchens, et al. v.*  
18 *County of Alameda, et al.*, United States District Court, Northern District of California, case no.  
19 06-CV-6870 SBA. Plaintiffs never served process on ACMC in this first case. Instead, Plaintiffs  
20 asked the court to deem service of process on the County of Alameda as effective service on  
21 ACMC. RJN at 2:19 – 3:2. The court correctly denied these attempts. RJN at 3:1-2. The court  
22 instead ordered Plaintiffs to serve all defendants in the first case, including ACMC, by October 3,  
23 2007. RJN at 3:3-4. Plaintiffs missed this October 3<sup>rd</sup> deadline. *See* RJN at 3:5-8. Instead, on  
24 November 2, 2007, Plaintiffs filed the instant Complaint herein, in a new case, case no. 07-CV-  
25 5600 SBA. The two cases were related by court order on February 7, 2008.

26 Plaintiffs delineate no individual causes of action in the instant Complaint. They allege  
27



1 that they are bringing an action pursuant to 42 U.S.C. section 1983. Complaint, at 1:18-20. They  
 2 also appear to claim that ACMC is liable for false imprisonment, intentional or negligent infliction  
 3 of emotional distress, violation of their California constitutional due process rights and rights  
 4 against unlawful searches and seizures, and violation of their rights as protected by California  
 5 Civil Code section 52.1. Complaint, at 4:7-13.

6 As set forth below, Plaintiff's claims do not state a claim, are time-barred, and are  
 7 otherwise barred by various state law immunities. Therefore, ACMC respectfully requests that its  
 8 motion to dismiss be granted.

## 9 **II. ARGUMENT**

### 10 **A. Plaintiff Has Failed to Allege Sufficient Facts to State a Section 1983 Claim** 11 **Against ACMC**

12 A public entity is only liable under 42 U.S.C. section 1983 where it has a policy, custom or  
 13 practice that violates the constitutional rights of an individual. *Monell v. Dep't of Soc. Servs.*, 436  
 14 U.S. 658, 691 (1978). It bears no vicarious liability for the acts or omissions of, for example, its  
 15 employees. (*Ibid.*) "[T]o prevail on their § 1983 claims, plaintiffs must have sufficiently alleged  
 16 that: (1) they were deprived of their constitutional rights by defendants and their employees acting  
 17 under color of state law; (2) that the defendants have customs or policies which "amount[] to  
 18 deliberate indifference" to their constitutional rights; and (3) that these policies are the "moving  
 19 force behind the constitutional violation." *Lee v. City of Los Angeles*, 250 F.3d 668, 681-682  
 20 (9th Cir. 2001). The causation requirement of sections 1983 and 1985 is not satisfied by a  
 21 showing of mere causation in fact. *See* W. Prosser, *Law of Torts* § 41 at 238-39 (4<sup>th</sup> ed. 1997).  
 22 Rather, the plaintiff must establish proximate or legal causation." *Arnold v. Internat'l Business*  
 23 *Machines Corp.*, 637 F.2d 1350, 1355 (9<sup>th</sup> Cir. 1981). The defendant's acts must be the proximate  
 24 cause of the injury. *Ibid.*

### 25 **1. Plaintiffs Have Failed to Allege Facts to Support a Violation of Their** 26 **Constitutional Rights by ACMC**



Here, the only rights Plaintiffs claim were violated were their Fourth<sup>1</sup> and Fourteenth Amendment rights. They claim “on information and belief” that ACMC’s actions “were part of a pattern and practice to seize and detain children in the absence of an emergency and in the absence of a warrant, without adequate investigation . . . .” Complaint, at 4:14-17. As set forth below, this claim is not supported by facts of which the Court is capable of taking judicial notice, nor is it supported by prevailing case authority.

ACMC did not make the decision to “seize or detain” Plaintiffs’ newborn. Complaint, at 2:14-16 (“a’hold’ had again been placed on the baby, at the request of Hernandez”). ACMC did not participate in the decision to re-institute the hold, nor in the investigation that led up to it. Complaint, at 2:6-14. Those are alleged to have been the actions of Mr. Hernandez and/or the County of Alameda. *Ibid*.

Mr. Hernandez’s actions do not, and cannot, reflect official policy or custom for ACMC. Mr. Hernandez is not an employee of ACMC. *Bd. of the County Comm’rs v. Brown*, 520 U.S. 397, 403-404 (1997). Mr. Hernandez is an employee of the County of Alameda. Complaint, at 2:6. The County of Alameda and the Alameda County Medical Center are separate and distinct public entities. California Health & Safety Code section 101850 permitted the County of Alameda to create an independent public hospital authority “for the purpose of effecting a transfer of the management, administration, and control of the [Alameda County] medical center in accordance with Section 14000.2 of the Welfare and Institutions Code.” Cal. Health & Safety Code § 101850, subd. (b). Section 101850 specifically provides that if the County creates such a public hospital authority, it shall be a separate public entity from the County:

**A hospital authority created pursuant to this chapter shall be a legal entity separate and apart from the county and shall file the statement required by Section 53051 of the Government Code. The hospital authority shall be a government entity separate and apart from the county, and shall not be considered to be an agency, division, or department of the county.** The hospital authority shall not be governed by, nor be subject to, the charter of the county and shall not be subject to policies or operational rules of the county, including, but not limited to, those relating to personnel and procurement.

<sup>1</sup> Plaintiffs claims are appropriately brought under the Fourteenth Amendment, not the Fourth Amendment. *See, e.g., Curnow v. Ridgecrest Police*, 952 F.2d 321, 325 (9th Cir. 1991).

1  
2 Cal. Health & Safety Code § 101850, subd. (j) (emphasis added).

3 Pursuant to this statute, in 1998, the County enacted Ordinance 0-98-56. A copy of this  
4 ordinance is attached as part of Exhibit 1 to the Request for Judicial Notice herein. This ordinance  
5 created the Alameda County Medical Center hospital authority as a separate public entity from the  
6 County. APMC is governed by a Board of Trustees separate and apart from the County Board of  
7 Supervisors. The Alameda County Medical Center appears on the California Secretary of State's  
8 Roster of Public Agencies as a separate public agency. RJN, Exhibit 1 (Roster of Public  
9 Agencies).

10 Even if Plaintiffs could claim that they are suing APMC based on the acts of one of its  
11 official policymakers, Mr. Hernandez is not an employee, let alone an official of APMC. All of  
12 the alleged actions Mr. Hernandez took were pursuant to his authority as an Alameda County  
13 social worker. He was not "speaking for" APMC when he made his decision to reinstitute the  
14 second hold. Therefore, Mr. Hernandez's decision to reinstitute the hold cannot operate to create  
15 section 1983 liability on the part of APMC.

16 Stripped of the actions taken by Mr. Hernandez, Plaintiff's allegations regarding APMC's  
17 conduct are, in essence, that APMC observed the hold that Mr. Hernandez placed on Plaintiffs'  
18 newborn, and, pursuant to that hold, temporarily disallowed Plaintiff from seeing her newborn by  
19 herself. Complaint, at 2:14-16. Plaintiffs claim that this conduct amounted to "unlawful[ ]  
20 cooperat[ion]" with Mr. Hernandez and the County of Alameda. Complaint, at 3:21-23.

21 This contention cannot support section 1983 liability on the part of APMC. To impose  
22 such liability on this basis would be to, in effect, hold APMC vicariously liable for Mr.  
23 Hernandez's decisions. APMC cannot be vicariously liable under 42 U.S.C. section 1983. It can  
24 only be liable for its own policy, custom or practice that violates the constitutional rights of an  
25 individual. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978).

26 The "policy" Plaintiffs seek to hold APMC liable for is a policy of following California  
27

law. In California, if a mother tests positive for a controlled substance, the law requires that a needs assessment be performed before the infant may be released from the hospital. Cal. Penal Code § 11165.13; Cal. Health & Saf. Code § 123605. The assessment may be made by a health practitioner or a medical social worker. Cal. Health & Saf. Code § 123605, subd. (b). State law further requires that this assessment include identifying any needed services for the mother, child or family, and determining the “level of risk to the newborn upon release to the home and the corresponding level of services and intervention, if any, necessary to protect the newborn’s health and safety, including *referral to the county welfare department for child welfare services.*” *Id.* at §123605, subd. (c)(2) (emphasis added). A social worker, in turn, may under California law

**[t]ake into and maintain temporary custody of, without a warrant, a minor . . . who the social worker has reasonable cause to believe is a person described in subdivision (b)<sup>[2]</sup> or (g)<sup>[3]</sup> of [Welf. & Instit. Code] Section 300, and the social worker has reasonable cause to believe that the minor has an immediate need for medical care or is immediate danger of physical or sexual abuse or the physical environment poses an immediate threat to the child’s health or safety.**

Cal. Welf. & Instit. Code § 306(a)(2) (emphasis added). Subdivisions (b) and (g) of section 300 describe situations in which a child is in substantial risk of being abused, or is left without any support.

After a hold is instituted, the social worker is to place the child in a “facility authorized by

<sup>2</sup> Section 300(b) of the Welfare and Institutions Code provides in relevant part:

The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse. . . .

<sup>3</sup> Section 300 (g) of the Welfare and Institutions Code provides:

The child has been left without any provision for support; physical custody of the child has been voluntarily surrendered pursuant to Section 1255.7 of the Health and Safety Code and the child has not been reclaimed within the 14-day period specified in subdivision (e) of that section; the child’s parent has been incarcerated or institutionalized and cannot arrange for the care of the child; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful.

1 law to care for the child.” Cal. Welf. & Instit. Code § 308, subd. (a). If a child is taken into  
2 custody while in the care of a “physician or surgeon **or a hospital**, . . . and cannot be immediately  
3 moved,” “the child shall **be deemed to have been taken into temporary custody** and delivered to  
4 the social worker . . . **while the child is at the . . . medical facility**.” Cal. Welf. & Instit. Code §  
5 309, subd. (b) (emphasis added).

6 ACMC’s actions were entirely consistent with the hold that had been placed on Plaintiff’s  
7 child by Mr. Hernandez. Because the infant was a newborn, and was already at Highland Hospital  
8 (part of ACMC), that infant simply remained at Highland while the dependency investigation  
9 progressed. Welf. & Instit. Code § 309. This is consistent with California law. There is no  
10 allegation that ACMC kept Plaintiffs’ infant any longer than was required by the hold. There is no  
11 allegation that Plaintiffs were completely deprived of any contact with their newborn. Rather, that  
12 access was restricted such that Ms. Moton could not be alone with her infant.

13 ACMC did not participate in, nor was it privy to, Mr. Hernandez’s decision making. This  
14 is true of many entities who are confronted with a decision by a third party to institute a hold.  
15 Plaintiffs now seek to impose section 1983 liability against ACMC because it observed the  
16 temporary hold imposed by separate, duly authorized third party. Under such a theory of section  
17 1983 liability, every entity that merely observes a temporary hold can be held, essentially,  
18 vicariously liable for the decision to impose that hold. Section 1983 does not permit entities to be  
19 held vicariously liability for the acts of their employees. By that same token, section 1983 should  
20 not be used to impose vicarious liability on third parties who did not even participate in the  
21 decision that Plaintiffs contend was unconstitutional.

22 There is no conduct by ACMC that is alleged to have constituted an independent  
23 constitutional violation. A hold had been placed on Plaintiffs’ child by a duly authorized social  
24 worker. ACMC observed that hold, but did not do so in a manner that imposed unnecessary  
25 burdens on Plaintiffs. ACMC allowed Plaintiffs access to their child under ACMC observation.  
26 ACMC did not go beyond what was necessary to observe the hold that was in place. Given the  
27

1 hold that was in place, this conduct, by itself, does not rise to the level of a constitutional violation.  
2 Plaintiffs have failed to allege sufficient facts to show that ACMC's policies, customs or practices  
3 amounted to a violation of Plaintiffs' Fourteenth Amendment rights. Therefore, Plaintiffs' section  
4 1983 claim against ACMC should be dismissed.

5 **2. ACMC Did Not Have Customs or Policies Which Amount to Deliberate**  
6 **Indifference to Plaintiffs' Constitutional Rights**

7 By that same token, ACMC did not have any customs or policies that amounted to  
8 deliberate indifference to Plaintiffs' constitutional rights. ACMC observed the temporary hold  
9 imposed by Mr. Hernandez. Mr. Hernandez's decision does not reflect "policy" of ACMC.  
10 ACMC should not be condemned for, essentially, the "policy" of observing the requirements of a  
11 hold placed by a duly authorized third party, especially when ACMC did not participate in that  
12 decision. For this additional reason, Plaintiffs' section 1983 claim against ACMC should be  
13 dismissed.

14 **3. ACMC's Policies or Customs Were Not the Moving Force Behind the**  
15 **Alleged Violation**

16 Finally, Plaintiffs cannot, and have not, alleged facts to show that *ACMC's* policies or  
17 customs were the "moving force" behind Plaintiffs' alleged constitutional violations. Again, the  
18 gravamen of Plaintiffs' complaint is that they believe Mr. Hernandez' decision to impose the  
19 second hold was improper. That was decision was not ACMC's, nor did ACMC participate in that  
20 decision.

21 ACMC alleged policy of "cooperation" with the hold was, at most, secondary to Plaintiffs'  
22 alleged constitutional violation. As far as ACMC knew, the hold was lawfully imposed by a duly  
23 authorized third party. *ACMC's policies or customs* were not the "moving force" behind  
24 Plaintiffs' claimed constitutional rights violation. The moving force was a decision previously  
25 made by an unrelated third party who did not speak for, or act on behalf of, ACMC. For this  
26 additional reason, Plaintiffs' section 1983 claim against ACMC should be dismissed.



**B. Plaintiffs' State Law Claims Are Time-Barred**

Turning exclusively to Plaintiffs' state law claims (Complaint, at 4:6-13), these claims are, at the outset, time-barred, under California Government Tort Claims Act. "Generally speaking, no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented until a written claim has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board." *Munoz v. State of California*, 33 Cal.App.4th 1767, 1776 (1995); Cal. Gov. Code §§ 905, 905.2, 911.2, 945.4. Current law, and the law in place at the time of the events in question, requires the injured party to present a claim within six months of his or her cause of action. Cal. Gov. Code §§ 911.2, 945.4. If the injured party fails to file a timely claim, a written application may be made to the public entity for leave to present a late claim, provided, however, that the application is made within a reasonable time, **"not to exceed one year of the accrual of the cause of action."** Cal. Gov. Code § 911.4.

Plaintiffs admit that they have never presented a claim to ACMC. Complaint, at 4:3-6. The allegedly wrongful acts all took place in November 2005. At the latest, the six-month claims presentment deadline ran out by June 2006. The tort claims act gave Plaintiffs a year after the accrual of the claim (or until November 2006) to file suit and seek leave to proceed without filing a claim. Cal. Gov. Code § 911.4. Plaintiffs failed to seek leave. California case authority establishes that presenting a claim (and otherwise following the requirements of the Tort Claims Act) is a jurisdictional requirement. *Dixon v. City of Turlock*, 219 Cal. App. 3d 907, 913 (Cal. Ct. App. 1990). Once the year deadline has passed, neither the public entity nor the courts have any discretion to waive or otherwise relieve a party from his or her failure to file a timely claim or file an application to seek to file suit without a claim. *Ibid*. Since Plaintiffs have never filed a claim with ACMC, their state law claims are now irretrievably barred.

Plaintiffs claim that "service of the tort claim on the County of Alameda constituted service on the defendant Alameda County Medical Center" is a legal conclusion, which this court is not

1 required to accept as true. *Papasan v. Allain*, 478 U.S. 265, 286 (1986) (on a motion to dismiss,  
2 courts "are not bound to accept as true a legal conclusion couched as a factual allegation"). This  
3 assertion is also legally baseless.

4 As set forth in the prior section, the County and ACMC are separate public entities. As  
5 such, California case authority holds that Plaintiffs' presentment of a claim to the County of  
6 Alameda does not operate as presentment of such a claim to ACMC. See, e.g. *Santee v. Santa*  
7 *Clara County Office of Educ.*, 220 Cal.App.3d 702, 713-714 (1990). Again, ACMC and the  
8 County are totally separate public entities. They are each run by a separate boards. As the court in  
9 *Santee v. Santa Clara County Office of Education* held, under these circumstances, presentment of  
10 a claim on the County does not effectuate presentment of a claim on ACMC. *Ibid*.

11 Because Plaintiffs never presented a claim to ACMC, Plaintiffs' state law claims are still  
12 time-barred. Therefore, Plaintiffs' state law claims should be dismissed without leave to amend.

### 13 C. Plaintiffs' State Law Claims are Barred by State Law Immunities

14 Even if Plaintiffs' state law claims were not time-barred, various state law immunities bar  
15 Plaintiffs' state claims against ACMC. Under the California Tort Claims Act, "[e]xcept as  
16 otherwise provided by statute: [¶] (a) A public entity is not liable for an injury, whether such injury  
17 arises out of an act or omission of the public entity or a public employee or any other person."  
18 Cal. Gov. Code § 815, subd. (a). "The liability of a public entity established by this part  
19 (commencing with Section 814) is subject to any immunity of the public entity provided by statute,  
20 including this part, and is subject to any defenses that would be available to the public entity if it  
21 were a private person." Cal. Gov. Code § 815, subd. (b); *Jacqueline T. v. Alameda County Child*  
22 *Protective Services*, 155 Cal.App.4th 456, 464 (2007).

23 Government Code section 820.4 immunizes public employees for their acts or omissions,  
24 while exercising due care, in the execution or enforcement of any law. Here, Plaintiffs appear to  
25 hold ACMC liable for enforcing the temporary hold that Mr. Hernandez imposed on Plaintiffs'  
26 newborn infant. ACMC had no reason to know or believe that there was anything unlawful about



1 that hold. Therefore, pursuant section 820.4, APMC is immune for its actions in enforcing the  
2 hold.

3 Government Code section 820.2 also immunizes APMC to the extent that APMC's acts  
4 and omissions regarding the hold were discretionary. Section 820.2 immunizes a public employee  
5 for acts or omissions that were the result of the exercise of discretion vested in him, regardless of  
6 whether that discretion was abused. Here, Plaintiffs complain that APMC observed and followed  
7 the hold that Mr. Hernandez had imposed. To the extent that Plaintiffs' claim that APMC had  
8 discretion to ignore, or supersede, the requirements of the hold imposed by Mr. Hernandez, APMC  
9 asserts that it is immune from liability for this discretionary decision, pursuant to Government  
10 Code section 820.2.

11 Government Code section 821.6 also immunizes APMC. Section 821.6 immunizes a  
12 public entity for any injury caused by a public employee instituting or prosecuting any judicial or  
13 administrative proceeding within the scope of his or her employment. Cal. Gov. Code § 821.6.  
14 While APMC was not the instigator of the hold, APMC's actions were necessary in order to  
15 protect the newborn while the child abuse investigation was proceeding. Since APMC's actions in  
16 enforcing the hold were incidental to the investigation, APMC and its personnel are immune under  
17 section 821.6. *Jacqueline T. v. Alameda County Child Protective Services*, 155 Cal. App. 4th 456,  
18 468 (Cal. Ct. App. 2007) (holding an employee's incidental actions taken in the course of  
19 investigating a child abuse case are immune).

20 Finally, Plaintiffs are seeking punitive or exemplary damages against APMC. Complaint,  
21 at 4:22-24. To the extent Plaintiffs seek punitive damages against APMC based on their state law  
22 claims, Government Code section 818 bars such claims against public entities. For this additional  
23 reason, APMC's motion should be granted with respect to Plaintiffs' punitive damages claims.

24 **D. Plaintiffs' Civil Code Section 52.1 Claim is Not Well-Pleaded**

25 Lastly, Plaintiffs' claim under California Civil Code section 52.1 fails on its face. Section  
26 52.1 reads in pertinent part:

(a) If a person or persons, whether or not acting under color of law, interferes *by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion*, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state . . . .

(b) Any individual whose exercise or enjoyment of rights secured by the Constitution or laws of the United States, or of rights secured by the Constitution or laws of this state, has been interfered with, or attempted to be interfered with, *as described in subdivision (a)*, may institute and prosecute in his or her own name and on his or her own behalf a civil action for damages, including, but not limited to, damages under Section 52, injunctive relief, and other appropriate equitable relief to protect the peaceable exercise or enjoyment of the right or rights secured. (emphasis added)

Plaintiffs nowhere allege that ACMC engaged in any threats, intimidation, or coercion. In order to sustain a violation of Civil Code section 52.1, a plaintiff must show an attempted or completed act of interference with a legal right, *accompanied by a form of coercion*. *City and County of San Francisco v. Ballard*, 136 Cal.App.4th 381, 408 (2006). "The language of section 52.1 provides remedies for 'certain misconduct that interferes with' federal or state laws, *if accompanied by threats, intimidation, or coercion, and whether or not state action is involved.*" *Venegas v. County of Los Angeles*, 32 Cal.4th 820, 843 (2004), citing *Jones v. Kmart Corp.*, 17 Cal.4th 329, 338 (1998) (emphasis added). Because Plaintiffs have not pled, and under no circumstances did there exist, any conduct by ACMC rising to the level of a threat of violence, intimidation, or coercion, Plaintiffs fail to satisfy the requirements for a claim under California Civil Code section 52.1. For this additional reason, ACMC's motion to dismiss should be granted.

### III. CONCLUSION

Plaintiffs' claims against ACMC are meritless. The section 1983 claim against ACMC fails because it seeks to impose section 1983 liability on ACMC based on a decision made by a third party, Mr. Hernandez, to impose a temporary hold. That decision was not a product of ACMC's policy, custom or practice. The actions ACMC's took pursuant to this hold did not, themselves, constitute constitutional violations, and ACMC's alleged practice of observing

1 temporary holds does not reflect "deliberate indifference" to Plaintiffs' constitutional rights.  
2 Finally, *ACMC's* actions were not the "moving force" behind Plaintiff's claimed section 1983  
3 claim. The moving force was the decision to impose the hold, which decision was not made by  
4 *ACMC*.

5 As for Plaintiffs' state law claims, they are time-barred by the California Tort Claims Act.  
6 Even if the state law claims were not time-barred, *ACMC* is immunized from liability by various  
7 state law immunities. Moreover, Plaintiffs' Civil Code section 52.1 claim is not well-pleaded.

8 For all of the foregoing reasons, defendant *ACMC* respectfully requests that the court grant  
9 this motion in its entirety without leave to amend.

10 DATED: February 19, 2008

11 *BOORNAZIAN, JENSEN & GARTHE*  
12 A Professional Corporation

13 By: /s/ Jill Sazama, Esq.  
14 *JILL P. SAZAMA, ESQ.*  
15 Attorneys for Defendant  
16 *ALAMEDA COUNT MEDICAL*  
17 *CENTER*

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
24981\421502

GREG J. ROCKWELL, ESQ. (SBN 67305)  
grockwell@bjg.com  
JILL P. SAZAMA, ESQ. (SBN 214215)  
jsazama@bjg.com  
BOORNAZIAN, JENSEN & GARTHE  
A Professional Corporation  
555 12<sup>th</sup> Street, Suite 1800  
P. O. Box 12925  
Oakland, CA 94604-2925  
Telephone: (510) 834-4350  
Facsimile: (510) 839-1897

Attorneys for Defendant ALAMEDA  
COUNTY MEDICAL CENTER

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOHN HUTCHENS, ZAMORA MOTON,  
and Baby S.A., by John F. Hutchens, next  
friend,  
  
Plaintiffs,  
  
vs.  
  
ALAMEDA COUNTY MEDICAL CENTER,  
and DOES 1-20,  
  
Defendants.

Case No.: 07 CV 5600 SBA  
Related case: 06 CV 06870 SBA

**DEFENDANT ALAMEDA COUNTY  
MEDICAL CENTER'S REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT OF  
MOTION TO DISMISS COMPLAINT**

Date: March 25, 2008  
Time: 1:00 p.m.  
Dept: Courtroom 3, 3<sup>rd</sup> floor

Complaint Filed: November 2, 2007

Defendant ALAMEDA COUNTY MEDICAL CENTER (hereafter "ACMC") hereby  
requests, pursuant to Rule 201 of the Federal Rules of Evidence, that the court, in ruling on the  
ACMC's motion to dismiss, take judicial notice of the following facts:

1. That the Alameda County Medical Center is an independent Public Hospital  
Authority created in 1998 by Alameda County Ordinance #0-98-56, pursuant to the authority of  
California Health & Safety Code section 101850.

2. That ACMC is governed by its own Board of Trustees, and not by the County of  
Alameda Board of Supervisors.

3. That Highland Hospital is an acute care hospital operated by ACMC.



1 *Hutchens I.* The Court did not grant this request. Order (Document 54), filed on October 3, 2007,  
2 in *Hutchens I.*

3 8. The Court further ordered that Plaintiffs serve all defendants by October 3, 2007.  
4 Order (Document 51), filed on September 19, 2007, in *Hutchens I.*

5 9. Plaintiffs never served ACMC with process, or with a claim. *Hutchens I*, passim;  
6 Complaint, at 4:2-6; "Motion for Extension of Time for Service of Summons and Complaint Upon  
7 Defendant Alameda County Medical Center," (Document no. 53), filed on October 3, 2007, in  
8 *Hutchens I.*

9  
10  
11 DATED: February 19, 2008

12 BOORNAZIAN, JENSEN & GARTHE  
13 A Professional Corporation

14 By: /s/ Jill Sazama, Esq.  
15 JILL P. SAZAMA, ESQ.  
16 Attorneys for Defendant  
ALAMEDA COUNT MEDICAL  
17 CENTER

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28 24981\422328

ORDINANCE NO. 0-98-56

CHAPTER 2.120 OF TITLE 2  
ALAMEDA COUNTY ADMINISTRATIVE CODE  
As Amended January 27, 1998

THE CREATION OF A COUNTY HOSPITAL AUTHORITY

---

Approved by: The Alameda County Board of  
Supervisors on February 3, 1998



rev. 1/28/98

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE ADDING CHAPTER 2.120 TO TITLE 2 OF THE ALAMEDA  
COUNTY ADMINISTRATIVE CODE REGARDING THE CREATION OF A COUNTY  
HOSPITAL AUTHORITY**

The Board of Supervisors of the County of Alameda ordains as follows:

**SECTION I**

Chapter 2.120 of Title 2 of the Alameda County Administrative Code is hereby added to read as follows:

**CHAPTER 2.120 - HOSPITAL AUTHORITY**

|           |   |
|-----------|---|
| 2.120.010 | Declaration of Findings.  |
| 2.120.020 | Creation of the Hospital Authority.                               |
| 2.120.030 | Hospital Authority Status; Governing Laws.                        |
| 2.120.040 | Hospital Authority Healthcare Delivery Structure; Public Hearing. |
| 2.120.050 | Mission and Purpose.  |
| 2.120.060 | Governing Board Composition.                                      |
| 2.120.070 | Term of Office.   |
| 2.120.080 | Duties of the Hospital Authority.                                 |
| 2.120.090 | Incremental Transfer of Powers.                                   |
| 2.120.100 | Personnel Transition; Benefits.                                   |
| 2.120.110 | Bylaws.   |
| 2.120.120 | Conflicts of Interest.  |

---

**2.120.010 Declaration of Findings.**

The Board of Supervisors of the County of Alameda does hereby find and declare as follows:

- (a) The Alameda County Medical Center presently consists of Highland General Hospital, Fairmont Hospital, the John George Psychiatric Pavilion, the Alameda Health Center, the Eastern Health Center, the Hayward Health Center, the Central Health Center and the Newark Health Center.

- (b) The Alameda County Medical Center provides medical and health services both independently and in conjunction with other components of the public and private health care networks in Alameda County including, but not limited to, the criminal justice system, the County public health, mental health and substance abuse programs, and community hospitals and health centers.
- (c) The County has historically contracted with several community based organizations which provide primary care services for the indigent and special needs populations in Alameda County at privately owned clinic facilities;
- (d) Due to the challenges facing the County of Alameda arising from changes in the public and private health industries, the community services provided by the existing Alameda County Medical Center could be more efficiently, effectively or economically provided by an independent hospital authority than by the County;
- (e) The creation of an independent hospital authority strictly and exclusively dedicated to the management, administration, and control of the Medical Center, in a manner consistent with the county's obligations under Section 17000 of the Welfare and Institutions Code, is the best way to fulfill its commitment to the medically indigent, special needs, and general populations of Alameda County in a manner that constitutes an ongoing material benefit to the county and its residents.
- (f) The Board of Supervisors has the authority to create a hospital authority for these purposes, as set forth in Section 101850 of the Health and Safety Code ("Section 101850").
- (g) That the county medical facilities currently known as the Alameda County Medical Center shall be governed, as set forth herein below, by a hospital authority ("Hospital Authority").
- (h) The Hospital Authority shall operate within the parameters established by Section 101850 and by the Board of Supervisors by way of this ordinance, amendments thereto, if any, formal written agreements and bylaws to be adopted by the Board of Supervisors;
- (i) The Hospital Authority shall be comprised of persons qualified as set forth in the bylaws.

**2.120.020 Creation of the Hospital Authority**

- (a) Having found it necessary to transfer specific powers and duties associated with the governance, administration, maintenance operation and control of the Medical Center to the Hospital Authority, the Board of Supervisors hereby creates and establishes a hospital authority pursuant to section 101850 of the Health and Safety Code.
- (b) The Hospital Authority created pursuant to this ordinance shall be known as the Alameda County Medical Center. The Board of Trustees of the Hospital Authority may recommend to the Board of Supervisors a change in name and an amendment to the Hospital Authority bylaws reflecting such change in name. A change in the name of the Hospital Authority would become effective upon the bylaws amendment. Any name change must be reported to the appropriate agencies of the State of California and accreditation bodies. Upon adoption of this ordinance the terms "Alameda County Medical Center" or "Medical Center" may be used interchangeably with the terms "Alameda County Hospital Authority" or "Hospital Authority" for the purposes of making reference to the hospital authority being created pursuant to this ordinance.
- (c) The Hospital Authority shall comply with the provisions of section 53051 and register with the Secretary of State as a public agency.
- (d) At all times applicable, the Hospital Authority shall govern and administer the Alameda County Medical Center in a manner consistent with section 101850, this ordinance, the Bylaws of the Hospital Authority and formal written agreements.
- (e) Pursuant to Section 101850(11) and the provisions of this ordinance, the creation and establishment of the Hospital Authority shall not constitute a transfer of governance, maintenance, operation or management of the Alameda County Medical Center without the satisfactory completion of specific tasks, and the execution of documents, agreements and/or contracts as set forth in the Board of Supervisors-approved Hospital Authority Governance Implementation Plan.

**2.120.030 Hospital Authority Status; Governing Laws**


- (a) The Hospital Authority is hereby designated a legal entity separate and apart from the County of Alameda subject to the limitations and requirements as set forth in Section 101850(j). The Hospital Authority shall not be a division or department of

the County of Alameda, and shall not be an agent of the County except where specifically provided. The obligations or liabilities of the Hospital Authority shall be the obligations or liabilities solely of the Hospital Authority and shall not be the obligations or liabilities of the County of Alameda.

- (b) The Hospital Authority is hereby deemed a public agency for purposes of eligibility with respect to grants and other funding and loan guarantee programs pursuant to Section 101850(gg).
- (c) The provisions of Section 101850 pertaining to the Tort Claims Act, the Myers-Millias-Brown Act, the Public Records Act and the Brown Act shall immediately take effect.

**2.120.040 Hospital Authority Healthcare Delivery Structure; Public Hearings**

- (a) The medical facilities owned by the County of Alameda and governed, maintained, operated and administered by the Hospital Authority shall consist of Highland General Hospital, Fairmont Hospital, the John George Psychiatric Pavilion, the Alameda Health Center, the Eastern Health Center, the Hayward Health Center, the Central Health Center, the Newark Health Center and the hospital-based clinics located at Highland General Hospital and Fairmont Hospital.

- (b)  The Hospital Authority shall provide the Alameda County Board of Supervisors 60 days notice prior to closing a facility, eliminating or reducing the level of medical services provided. Such notice shall include a statement of impact as specified by Alameda County or required pursuant to Health and Safety Code Section 1442.5.

**2.120.050 Mission and Purpose.**

The Alameda County Medical Center is committed to maintaining and improving the health of all Alameda County residents, regardless of ability to pay.

---

The Alameda County Medical Center will provide comprehensive, high quality medical treatment, health promotion and health maintenance through an integrated system of hospitals, clinics, and health services staffed by individuals who are responsive to the diverse cultural needs of our community.

The Alameda County Medical Center, as a training institution, is committed to maintaining an environment that is supportive of a wide range of educational programs and activities.

Education, including continuing education, of medical students, residents, nursing and other staff, along with clinical research, are all essential components of our environment.

The purpose of the Alameda County Medical Center is to manage, administer and control the Alameda County Medical Center, a group of public hospitals and ambulatory care clinics, in a manner that assures accessible, cost effective, quality medical care.

**2.120.060 Governing Board Composition**

The governing body of the Hospital Authority shall be known as the Hospital Authority's Board of Trustees. The membership of the Board of Trustees shall be as appointed by majority vote of the Board of Supervisors pursuant to ordinance. The composition of the Board of Trustees, the qualifications for membership, the manner of appointment and selection, and the manner of removal of members of the Board of Trustees shall be as set forth in the Bylaws of the Hospital Authority.

**2.120.070 Term of Office.**

A term as Trustee shall be as set forth in the Bylaws of the Hospital Authority.

**2.120.080 Duties of Hospital Authority.**

The Hospital Authority shall provide direction and oversight for the day-to-day operations of the Alameda County-owned hospitals and clinics as set forth in formal written agreements with the County of Alameda and as set forth in the Bylaws to the extent such duties and responsibilities are consistent with said written agreements and the provisions of Section 101850.

**2.120.090 Incremental Transfer of Powers.**

- 
- (a) The transfer of the governance, administration, operations and maintenance of the Alameda County Medical Center shall occur in an incremental manner through a series of coordinated phases. The intent of this phased-in implementation is to coordinate the transfer and to make it as smooth as possible for the patient population and for affected employees, staff, and governing board members.
  - (b) The effective date of transfer of governance shall be the date of execution of the master services contract, county support services contract and the facilities leases

identified in the Implementation Plan and the transfer of the general acute care hospital license.

- (c) The individual phases shall be implemented as set forth in the Hospital Authority Governance Implementation Plan approved by the Board of Supervisors. The Implementation Plan shall provide for: 1. prerequisites to the formal transfer of operations and maintenance of the Medical Center; 2. the formal transfer of the operations and maintenance; 3. the transfer of the personnel. Progress on these phases may occur concurrently except as otherwise provided in the Transition Plan. The formal transfer of operations shall not occur until the prerequisites for such transfer have been substantially completed. The transfer of personnel shall not occur until the formal transfer of governance.
- (d) The County of Alameda may lend the Hospital Authority funds in a manner consistent with applicable law and county policy.
- (e) The Hospital Authority may engage in marketing, advertising, and promotion of the medical and health care services to be made available to the community at the Medical Center.
- (f) The Hospital Authority shall accept the assignment and delegation of all contracts in which the County of Alameda is a party on behalf of the Alameda County Medical Center. Once assigned, the Hospital Authority shall possess those rights and perform the duties previously attributed to the County of Alameda, including the right to terminate the contracts pursuant to the contract terms.

**2.120.100 Personnel Transition; Benefits.**

- (a) The Board of Supervisors shall adopt a personnel transition plan as set forth in Section 101850(w).
- (b) ~~In the event the Hospital Authority elects to hire personnel in preparation for the transfer of the maintenance, operation, administration and management of the Medical Center prior to the execution of formal written agreements that provides for such transfer, those employees shall be eligible to participate in the County Employees Retirement System pursuant to Section 101850(s) and applicable law.~~
- (c) A transfer of functions from county employee classifications to the Hospital Authority prior to the transfer of the maintenance, operation, administration and management of the Medical Center, if any, shall result in the recognition of affected



employee organizations pursuant to Section 101850(v) and the operation of the memorandum of understanding that is in effect at that time pursuant to Section 101850(x).

**2.120.110 Bylaws.**

- (a) The Board of Supervisors shall adopt a set of bylaws for the Hospital Authority that supersedes the existing bylaws of the Medical Center. The bylaws shall become operative upon approval by a majority vote of the Board of Supervisors. Any changes or amendments to the bylaws shall be by majority vote of the Board of Supervisors.
- (b) The bylaws shall provide, in detail, for the operation of the Hospital Authority, and shall contain articles pertaining to, at minimum, the following areas:
  - (1) Structure of the Medical Center;
  - (2) Mission and purposes of the Alameda County Medical Center;
  - (3) Qualifications for membership on the Hospital Authority Board of Trustees;
  - (4) Composition and term of office;
  - (5) Vacancies and removal;
  - (6) Compensation;
  - (7) Conflict of interest;
  - (8) Duties and responsibilities of Board of Trustees members;
  - (9) Powers and duties of the Hospital Authority;
  - (10) Meetings
  - (11) Committees
  - (12) Officers
  - (13) Medical Staff
  - (14) Indemnification
  - (15) Amendment and review of bylaws

---

**2.120.120 Conflicts of Interest.**

The Hospital Authority and its officers shall conduct activities in a manner that is in conformity with the laws of the State of California as they pertain to conflicts of interest, including, but not limited to, the following:



(a) Political Reform Act.

The Hospital Authority shall adopt and promulgate a Conflict of Interest Code pursuant to the provisions of the Political Reform Act of 1974, and shall be submitted to the Fair Political Practices Authority or other appropriate code reviewing body within six months of the date the Hospital Authority came into existence pursuant to the effective date of this ordinance. Each member of the Hospital Authority governing board is subject to the provisions of the Political Reform Act, and will be required to execute a "statement of economic interests" in a manner consistent with the Act and the Conflict of Interest Code.

(b) Financial Interests Involving Contracts.

Each member of the Hospital Authority governing board shall be subject to the provisions of the California Government Code (§ 1090, et seq.) relating to personal financial interests in contracts made by the Hospital Authority.

(c) Common Law Conflict of Interest.

Each Hospital Authority governing board member and officer shall discharge his or her duties with integrity and fidelity and may not let private interests influence public decisions.

(d) Incompatible Activities.

Hospital Authority members and officers may be subject to the provisions of the California Government Code (§ 1125, et seq.) pertaining to activities for compensation which are incompatible with the duties connected to the Hospital Authority.

SECTION II

Section 2.100.040 of Chapter 2.100 of Title 2 of the Alameda County Administrative Code is amended to read as follows:

**2.100.040 General powers and duties.**

- (a) Subject to the direction and control of the Board of Supervisors, and to applicable state laws, rules and regulations and local ordinances not inconsistent therewith, the Health Care Services Agency Director ("Director") shall be in charge of and

responsible for the coordination and direction of the public health department, behavioral care department, mental health programs, drug abuse programs, alcoholism programs, and any other programs in the health care field which the Board of Supervisors may in the future assign to the agency. The Director shall have those powers and duties as set forth in the Administrative Code and as otherwise assigned by the Board of Supervisors to the Director.

- (b) The Director shall recommend to the Board of Supervisors contractual agreements with other agencies for the provision of certain special services deemed medically necessary, and for which the County could not reasonably, effectively, or efficiently provide. The Director shall monitor performance under such contracts and advise the Board of Supervisors on matters related thereto.
- (c) The Director may exercise his or her authority through subordinate administrators.
- (d) The Director shall report to the board of supervisors any unusual occurrence or matter which, in his or her judgment, requires remedial or corrective action by the Board of Supervisors.
- (e) The terms of this section shall become operative upon transfer of governance as provided in this chapter.

### SECTION III

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage, and before the expiration of fifteen (15) days after its passage, shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the said County of Alameda.

---

Adopted by the Board of Supervisors of the County of Alameda, State of California, on this  
\_\_\_\_\_ day of \_\_\_\_\_, by the following called vote:

AYES: Supervisors

NOES: Supervisors

EXCUSED: Supervisors

PRESIDENT OF THE BOARD OF SUPERVISORS,  
County of Alameda, State of California

ATTEST: LESLIE BURNS, Acting Clerk  
of the Board of Supervisors,  
County of Alameda, State of California

By: \_\_\_\_\_

y:\acmc\authord.112

Adopted by the Board of Supervisors of the County of Alameda, State of California, on this

3rd day of February, 1998, by the following called vote:

AYES: Supervisors Haggerty, King, Steele and President Carson - 4

NOES: Supervisors None

EXCUSED: Supervisor Chan - 1

*Keith Carson*

PRESIDENT OF THE BOARD OF SUPERVISORS,  
County of Alameda, State of California

ATTEST: LESLIE BURNS, Acting Clerk  
of the Board of Supervisors,  
County of Alameda, State of California

By: *Leslie J. Burns*

y:\acmclauthord.112

APPROVED TO FORM  
DOUGLAS HICKLING, County Counsel

By: *D. Hickling*

Title 2 ADMINISTRATION

**Chapter 2.120 HOSPITAL AUTHORITY**

- 2.120.010 Declaration of findings.
- 2.120.020 Creation of the hospital authority.
- 2.120.030 Hospital authority status; governing laws.
- 2.120.040 Hospital authority healthcare delivery structure; public hearings.
- 2.120.050 Mission and purpose.
- 2.120.060 Governing board composition.
- 2.120.070 Term of office.
- 2.120.080 Duties of hospital authority.
- 2.120.090 Incremental transfer of powers.
- 2.120.100 Personnel transition; benefits.
- 2.120.110 Bylaws.
- 2.120.120 Conflicts of interest.

**2.120.010 Declaration of findings.**

The board of supervisors of the county of Alameda does hereby find and declare as follows:

- A. The Alameda County Medical Center presently consists of Highland General Hospital, Fairmont Hospital, the John George Psychiatric Pavilion, the Alameda Health Center, the Eastern Health Center, the Hayward Health Center, the Central Health Center and the Newark Health Center.
- B. The Alameda County Medical Center provides medical and health services both independently and in conjunction with other components of the public and private health care networks in Alameda County including, but not limited to, the criminal justice system, the county public health, mental health and substance abuse programs, and community hospitals and health centers.
- C. The county has historically contracted with several community-based organizations which provide primary care services for the indigent and special needs populations in Alameda County at privately owned clinic facilities.
- D. Due to the challenges facing the county arising from changes in the public and private health industries, the community services provided by the existing Alameda County Medical Center could be more efficiently, effectively or economically provided by an independent hospital authority than by the county.
- E. The creation of an independent hospital authority strictly and exclusively dedicated to the management, administration, and control of the medical center, in a manner consistent with the county's obligations under Section 17000 of the Welfare and Institutions Code, is the best way to fulfill its commitment to the medically indigent, special needs, and general populations of Alameda County in a manner that constitutes an ongoing material benefit to the county and its residents.
- F. The board of supervisors has the authority to create a hospital authority for these purposes, as set forth in Section 101850 of the Health and Safety Code ("Section 101850").
- G. The county medical facilities currently known as the Alameda County Medical Center shall be governed, as set forth herein below, by a hospital authority ("hospital authority").
- H. The hospital authority shall operate within the parameters established by Section 101850 and by the board of supervisors by way of this chapter, amendments thereto, if any, formal written agreements and bylaws to be adopted by the board of supervisors.

I. The hospital authority shall be comprised of persons qualified as set forth in the bylaws. (Ord. 98-56 § 1 (part))

#### **2.120.020 Creation of the hospital authority.**

A. Having found it necessary to transfer specific powers and duties associated with the governance, administration, maintenance, operation and control of the medical center to the hospital authority, the board of supervisors hereby creates and establishes a hospital authority pursuant to Section 101850 of the Health and Safety Code.

B. The hospital authority created pursuant to this chapter shall be known as the Alameda County Medical Center. The board of trustees of the hospital authority may recommend to the board of supervisors a change in name and an amendment to the hospital authority bylaws reflecting such change in name. A change in the name of the hospital authority would become effective upon the bylaws amendment. Any name change must be reported to the appropriate agencies of the state of California and accreditation bodies. Upon adoption of the ordinance codified in this chapter the terms "Alameda County Medical Center" or "medical center" may be used interchangeably with the terms "Alameda County Hospital Authority" or "hospital authority" for the purposes of making reference to the hospital authority being created pursuant to this chapter.

C. The hospital authority shall comply with the provisions of Section 53051 and register with the Secretary of State as a public agency.

D. At all times applicable, the hospital authority shall govern and administer the Alameda County Medical Center in a manner consistent with Section 101850, this chapter, the bylaws of the hospital authority and formal written agreements.

E. Pursuant to Section 101850(II) and the provisions of this chapter, the creation and establishment of the hospital authority shall not constitute a transfer of governance, maintenance, operation or management of the Alameda County Medical Center without the satisfactory completion of specific tasks, and the execution of documents, agreements and/or contracts as set forth in the board of supervisors-approved hospital authority governance implementation plan. (Ord. 98-56 § 1 (part))

#### **2.120.030 Hospital authority status; governing laws.**

A. The hospital authority is hereby designated a legal entity separate and apart from the county subject to the limitations and requirements as set forth in Section 10185(j). The hospital authority shall not be a division or department of the county, and shall not be an agent of the county except where specifically provided. The obligations or liabilities of the hospital authority shall be the obligations or liabilities solely of the hospital authority and shall not be the obligations or liabilities of the county.

B. The hospital authority is hereby deemed a public agency for purposes of eligibility with respect to grants and other funding and loan guarantee programs pursuant to Section 101850(gg).

C. The provisions of Section 101850 pertaining to the Tort Claims Act, the Myers-Milias-Brown Act, the Public Records Act and the Brown Act shall immediately take effect. (Ord. 98-56 § 1 (part))

#### **2.120.040 Hospital authority healthcare delivery structure; public hearings.**

A. The medical facilities owned by the county of Alameda and governed, maintained, operated and administered by the hospital authority shall consist of Highland General Hospital, Fairmont Hospital, the John George Psychiatric Pavilion, the Alameda Health Center, the Eastern Health Center, the Hayward Health Center, the Central Health Center, the Newark Health Center and the hospital-based clinics located at Highland General Hospital and Fairmont Hospital.

B. The hospital authority shall provide the Alameda County board of supervisors sixty (60) days' notice prior to closing a facility, eliminating or reducing the level of medical services provided. Such notice shall include a statement of impact as specified by Alameda County or required pursuant to Health and Safety Code Section 1442.5. (Ord. 98-56 § 1 (part))

#### **2.120.050 Mission and purpose.**

The Alameda County Medical Center is committed to maintaining and improving the health of all Alameda County residents, regardless of ability to pay.

The Alameda County Medical Center will provide comprehensive, high quality medical treatment, health promotion and health maintenance through an integrated system of hospitals, clinics, and health services staffed by individuals who are responsive to the diverse cultural needs of our community.

The Alameda County Medical Center, as a training institution, is committed to maintaining an environment that is supportive of a wide range of educational programs and activities.



Education, including continuing education, of medical students, residents, nursing and other staff, along with clinical research, are all essential components of our environment.

The purpose of the Alameda County Medical Center is to manage, administer and control the Alameda County Medical Center, a group of public hospitals and ambulatory care clinics, in a manner that assures accessible, cost effective, quality medical care. (Ord. 98-56 § 1 (part))

#### **2.120.060 Governing board composition.**

The governing body of the hospital authority shall be known as the hospital authority's board of trustees. The membership of the board of trustees shall be as appointed by majority vote of the board of supervisors pursuant to ordinance. The composition of the board of trustees, the qualifications for membership, the manner of appointment and selection, and the manner of removal of members of the board of trustees shall be as set forth in the bylaws of the hospital authority. (Ord. 98-56 § 1 (part))

#### **2.120.070 Term of office.**

A term as trustee shall be as set forth in the bylaws of the hospital authority. (Ord. 98-56 § 1 (part))

#### **2.120.080 Duties of hospital authority.**

The hospital authority shall provide direction and oversight for the day-to-day operations of the Alameda County-owned hospitals and clinics as set forth in formal written agreements with the county of Alameda and as set forth in the bylaws to the extent such duties and responsibilities are consistent with said written agreements and the provisions of Section 101850. (Ord. 98-56 § 1 (part))

#### **2.120.090 Incremental transfer of powers.**

A. The transfer of the governance, administration, operations and maintenance of the Alameda County Medical Center shall occur in an incremental manner through a series of coordinated phases. The intent of this phased-in implementation is to coordinate the transfer and to make it as smooth as possible for the patient population and for affected employees, staff, and governing board members.

B. The effective date of transfer of governance shall be the date of execution of the master services contract, county support services contract and the facilities leases identified in the implementation plan and the transfer of the general acute care hospital license.

C. The individual phases shall be implemented as set forth in the hospital authority governance implementation plan approved by the board of supervisors. The implementation plan shall provide for: (1) prerequisites to the formal transfer of operations and maintenance of the medical center; (2) the formal transfer of the operations and maintenance; (3) the transfer of the personnel. Progress on these phases may occur concurrently except as otherwise provided in the transition plan. The formal transfer of operations shall not occur until the prerequisites for such transfer have been substantially completed. The transfer of personnel shall not occur until the formal transfer of governance.

D. The county may lend the hospital authority funds in a manner consistent with applicable law and county policy.

E. The hospital authority may engage in marketing, advertising, and promotion of the medical and health care services to be made available to the community at the medical center.

F. The hospital authority shall accept the assignment and delegation of all contracts in which the county of Alameda is a party on behalf of the Alameda County Medical Center. Once assigned, the hospital authority shall possess those rights and perform the duties previously attributed to the county of Alameda, including the right to terminate the contracts pursuant to the contract terms. (Ord. 98-56 § 1 (part))

#### **2.120.100 Personnel transition; benefits.**

A. The board of supervisors shall adopt a personnel transition plan as set forth in Section 101850(w).

B. In the event the hospital authority elects to hire personnel in preparation for the transfer of the maintenance, operation, administration and management of the medical center prior to the execution of formal written agreements that provides for such transfer, those employees shall be eligible to participate in the County Employees Retirement System pursuant to Section 101850(s) and applicable law.

C. A transfer of functions from county employee classifications to the hospital authority prior to the transfer of the maintenance, operation, administration and management of the medical center, if any, shall result in the



recognition of affected employee organizations pursuant to Section 101850(v) and the operation of the memorandum of understanding that is in effect at that time pursuant to Section 101850(x). (Ord. 98-56 § 1 (part))

#### 2.120.110 Bylaws.

A. The board of supervisors shall adopt a set of bylaws for the hospital authority that supersedes the existing bylaws of the medical center. The bylaws shall become operative upon approval by a majority vote of the board of supervisors. Any changes or amendments to the bylaws shall be by majority vote of the board of supervisors.

B. The bylaws shall provide, in detail, for the operation of the hospital authority, and shall contain articles pertaining to, at minimum, the following areas:

1. Structure of the medical center;
2. Mission and purposes of the Alameda County Medical Center;
3. Qualifications for membership on the hospital authority board of trustees;
4. Composition and term of office;
5. Vacancies and removal;
6. Compensation;
7. Conflict of interest;
8. Duties and responsibilities of board of trustees members;
9. Powers and duties of the hospital authority;
10. Meetings;
11. Committees;
12. Officers;
13. Medical staff;
14. Indemnification;
15. Amendment and review of bylaws. (Ord. 98-56 § 1 (part))

#### 2.120.120 Conflicts of interest.

The hospital authority and its officers shall conduct activities in a manner that is in conformity with the laws of the state of California as they pertain to conflicts of interest, including, but not limited to, the following:

A. Political Reform Act. The hospital authority shall adopt and promulgate a conflict of interest code pursuant to the provisions of the Political Reform Act of 1974, and shall be submitted to the Fair Political Practices Authority or other appropriate code reviewing body within six months of the date the hospital authority came into existence pursuant to the effective date of the ordinance codified in this chapter. Each member of the hospital authority governing board is subject to the provisions of the Political Reform Act, and will be required to execute a "statement of economic interests" in a manner consistent with the Act and the conflict of interest code.

B. Financial Interests Involving Contracts. Each member of the hospital authority governing board shall be subject to the provisions of the California Government Code (Section 1090, et seq.) relating to personal financial interests in contracts made by the hospital authority.

C. Common Law Conflict of Interest. Each hospital authority governing board member and officer shall discharge his or her duties with integrity and fidelity and may not let private interests influence public decisions.

D. Incompatible Activities. Hospital authority members and officers may be subject to the provisions of the California Government Code (Section 1125, et seq.) pertaining to activities for compensation which are incompatible with the duties connected to the hospital authority. (Ord. 98-56 § 1 (part))

<< previous | next >>

License: 1400000495  
Effective: 07/01/2007  
Expires: 06/30/2008  
Licensed Capacity: 475

**State of California**  
**Department of Health Services**

In accordance with applicable provisions of the Health and Safety Code of California and its rules and regulations, the Department of Health Services hereby issues

*this License to*

**Alameda County Medical Center**

to operate and maintain the following **General Acute Care Hospital**

**ALAMEDA COUNTY MEDICAL CENTER**

1411 EAST 31ST ST.  
OAKLAND, CA 94602

**FAIRMONT CAMPUS**

15400 FOOTHILL BLVD.  
SAN LEANDRO, CA 94578

**Bed Classifications/Services**

236 General Acute Care  
20 Intensive Care  
17 Perinatal Services  
8 Intensive Care Newborn Nursery  
191 Unspecified General Acute Care

**Other Approved Services**

Basic Emergency  
Dental Services  
Mobile Unit - MRI  
Nuclear Medicine  
Occupational Therapy  
Outpatient Services  
Physical Therapy  
Respiratory Care Services  
Social Services

(Additional Information Listed on License Addendum)

Sandra Shewry  
DIRECTOR

for Datsy Stedler HIES  
Julieta L. Ramirez

(AUTHORIZED REP.)

Refer Complaints regarding these facilities to: The California Department of Health Services, Licensing and Certification, East Bay District Office, 850 Marina Bay Parkway, Building P, 1st Floor Richmond, CA 948046403, (510)820-3900

POST IN A PROMINENT PLACE



# State of California Secretary of State

## STATEMENT OF FACTS ROSTER OF PUBLIC AGENCIES FILING (Government Code Section 53051)

**FILED**  
In the office of the Secretary of State  
of the State of California

MAY 01 2006

(Office Use Only)

### Instructions.

1. Complete and mail to: Secretary of State,  
P.O. Box 942877, Sacramento, CA 94277-0001 (916) 653-3984
2. A street address must be given as the official mailing address or as  
the address of the presiding officer.
3. Complete addresses as required.
4. If you need additional space, please include information on an 8 1/2 X 11 page.

New Filing ☐ Update ☒

Legal name of Public Agency: ALAMEDA COUNTY MEDICAL CENTER

Nature of Update: OFFICER CHANGE OF OFFICERS: NEW MEMBER: TWO MEMBERS RESIGNED

County: ALAMEDA

Official Mailing Address: 1411 E. 31ST STREET, OAKLAND, CA 94602

Name and Address of each member of the governing board:

Chairman, President or other Presiding Officer (Indicate Title): PRESIDENT

Name: J. BENNETT TATE Address: 6216 THORNHILL DR., OAKLAND CA 94611

Secretary or Clerk (Indicate Title): CLERK OF THE BOARD

Name: BARBARA MILLER-ELEGBEDE Address: 1411 E. 31ST STREET, OAKLAND 94602

### Members:

Name: J. BENNETT TATE

Address: 6216 THORNHILL DR., OAKLAND 94611

Name: STANLEY SCHIFFMAN

Address: 120 NORWICH RD., ALAMEDA, CA 94611

Name: DANIEL BOGGAN, JR.

Address: 1969 BYWOOD DRIVE, OAKLAND, CA 94602

Name: FLOYD RUEN, MD

Address: 2181 BRAEMER RD., OAKLAND, CA 94602

Name: ILENE WEINREB

Address: 65 HILLER DR., OAKLAND, CA 94613

Date: APRIL 27, 2006

Signature Barbara Miller-Elegbede  
CLERK OF THE BOARD

Typed Name and Title

DE-2 2/2

05/01/06

ALAMEDA COUNTY MEDICAL CENTER

STATEMENT OF FACTS  
ROSTER OF PUBLIC AGENCIES  
(ADDITIONAL MEMBERS)

| NAME              | ADDRESS                                      |
|-------------------|--|
| JOE PHAN          | 3598 YELLOWSTONE COURT, PLEASANTON, CA 94588 |
| BARBARA PRICE     | 1047 TAHITI LANE, ALAMEDA, CA 94602          |
| RICHARD WARREN    | 4271S WEIGAND COURT, FREMONT, CA 94539       |
| KON NELSON        | 1460 LINCOLN STREET, BERKELEY, CA 94702      |
| DR. THEODORE ROSE | 6025 LASALLE AVENUE, OAKLAND, CA 94611       |



**State of California  
Department of Health Services  
License Addendum**

License: 140000046  
Effective: 07/01/2007  
Expires: 06/30/2008  
Licensed Capacity: 475

FAIRMONT CAMPUS  
15400 FOOTHILL BLVD.  
SAN LEANDRO, CA 94578

**Bed Classifications/Services**  
50 General Acute Care  
50 Rehabilitation Center

**Other Approved Services**

Audiology  
Dental Services  
Occupational Therapy  
Outpatient Services  
Physical Therapy  
Social Services  
Speech Pathology

JOHN GEORGE PAVILION/HIGHLAND D/P APH  
2060 FAIRMONT DRIVE  
SAN LEANDRO, CA 94578

**Bed Classifications/Services**  
80 Acute Psychiatric

ALAMEDA COUNTY MEDICAL CENTER D/P SNF  
15400 FOOTHILL BOULEVARD  
SAN LEANDRO, CA 94578

**Bed Classifications/Services**  
109 Skilled Nursing

This LICENSE is not transferable and is granted solely upon the following conditions, limitations and comments:

Consolidated license

MRI in Building K

SNF beds located in areas B1,B2,B3,B4

URGENT CARE CENTER

Refer Complaints regarding these facilities to: The California Department of Health Services, Licensing and Certification, East Bay District Office, 850 Marina Bay Parkway, Building P, 1st Floor Richmond, CA 948046403, (510)820-3900

GREG J. ROCKWELL, ESQ. (SBN 67305)  
grockwell@bjg.com  
JILL P. SAZAMA, ESQ. (SBN 214215)  
jsazama@bjg.com  
BOORNAZIAN, JENSEN & GARTHE  
A Professional Corporation  
555 12<sup>th</sup> Street, Suite 1800  
P. O. Box 12925  
Oakland, CA 94604-2925  
Telephone: (510) 834-4350  
Facsimile: (510) 839-1897

Attorneys for Defendant ALAMEDA  
COUNTY MEDICAL CENTER

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOHN HUTCHENS, ZAMORA MOTON,  
and Baby S.A., by John F. Hutchens, next  
friend,  
  
Plaintiffs,  
  
vs.  
  
ALAMEDA COUNTY MEDICAL CENTER,  
and DOES 1-20,  
  
Defendants.

Case No.: 07 CV 5600 SBA  
Related case: 06 CV 06870 SBA  
  
[PROPOSED] ORDER GRANTING  
MOTION TO DISMISS COMPLAINT  
  
Date: Tuesday, March 25, 2008  
Time: 1:00 p.m.  
Dept. Courtroom 3, 3<sup>rd</sup> Floor  
  
Complaint filed: November 2, 2007

The above-referenced matter came on regularly for hearing on March 25, 2008 at 1:00 p.m. in Courtroom 3, 3<sup>rd</sup> floor of the above-captioned Court in Oakland, the Hon. Saundra Brown Armstrong presiding. Jill P. Sazama, Esq. appeared on behalf of defendant and moving party ALAMEDA COUNTY MEDICAL CENTER, Frances S. Kaminer, Esq. and/or Walter K. Pyle, Esq. appeared on behalf of plaintiff JOHN HUTCHENS, and David J. Beauvais, Esq. appeared on behalf of plaintiff ZAMORA MOTON.

The Court having considered the moving papers submitted by defendant, all opposition thereto, and good cause appearing, IT IS HEREBY ORDERED:



1 That defendant's Motion to Dismiss to the Complaint is GRANTED \_\_\_\_\_  
2 leave to amend. If the Motion is GRANTED with leave to amend, plaintiff shall have \_\_\_\_ days  
3 after service of this order by the court to file and serve an amended complaint.

4 IT IS SO ORDERED.

5 DATED: \_\_\_\_\_  
6

7 By: \_\_\_\_\_  
8 SAUNDRA BROWN ARMSTRONG  
9 UNITED STATES DISTRICT JUDGE

10 24981\422337  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE BY ELECTRONIC SERVICE**

I, the undersigned, declare as follows:

I am employed in the County of Alameda, State of California. I am over the age of 18 years and not a party to the within action. My business address is 555 12th Street, Suite 1800, P. O. Box 12925, Oakland, California 94604-2925.

On the date indicated below, at the above-referenced business location, I served the **ALAMEDA COUNTY MEDICAL CENTER'S NOTICE OF MOTION AND MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(B)(6); MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF SAME, REQUEST FOR JUDICIAL NOTICE, EXHIBIT 1, AND [PROPOSED] ORDER** on the below-named party and caused said document to be transmitted using ECF as specified by General Order No. 45 to the following party:

Frances S. Kaminer, Esq.  
Walter K. Pyle, Esq.  
LAW OFFICES OF WALTER K. PYLE  
2039 Shattuck Avenue, Suite 202  
Berkeley, CA 94704  
Telephone: 510-849-4424

**Attorneys for Plaintiffs**  
**JOHN F. HUTCHENS, SAMORA MOTON,**  
**and BABY S.A., by John F. Hutchens**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California, on February 19, 2008.

  
Carmen Kalt

24981\421502